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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BETTY MADISON, as mother and heir of
decedent ERIC DUANE MADISON,

Plaintiff,

Case No. 3:18-cv-00128-LRH-VPC

ORDER

v.

PROGRESSIVE CASUALTY INSURANCE
COMPANY, a foreign corporation; DOES 1
through X inclusive; ABC Corporations I
through X inclusive; and BLACK AND
WHITE COMPANIES I through X;

Defendant.

Plaintiff Betty Madison initiated this action in the Second Judicial District Court for Washoe County, Nevada on February 16, 2017. On March 26, 2018, on the basis of diversity jurisdiction, defendant Progressive Casualty Insurance Company filed a notice of removal to this court (ECF NO. 1¹).

After review of the complaint and Defendant's petition for removal, the court finds that it requires more evidence to determine whether it has subject matter jurisdiction over this case. While it appears that the parties are of diverse citizenship², Defendant has not demonstrated that the amount in controversy exceeds \$75,000.

¹ Refers to the court's docketing number.

² Plaintiff is a resident of North Carolina and defendant is incorporated under the laws of Ohio.

1 “[A]ny civil action brought in a State court of which the district courts of the United
2 States have original jurisdiction, may be removed by the defendant . . . to the district court of the
3 United States for any district . . . where such action is pending.” 28 U.S.C. § 1441(a). Among
4 other reasons, the district courts of the United States have “original jurisdiction” where there is
5 diversity of citizenship between the parties and the amount in controversy, exclusive of interest
6 and costs, exceeds \$75,000. 28 U.S.C. § 1332(a).

7 “If . . . it appears that the district court lacks subject matter jurisdiction, the case shall be
8 remanded.” 28 U.S.C. § 1447(c). “Federal jurisdiction must be rejected if there is any doubt as
9 to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
10 1992) (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)).
11 Moreover, the removal statute is construed restrictively and in favor of remanding a case to state
12 court. *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus*, 980 F.2d at
13 566.

14 After a defendant files a petition for removal, the court must determine whether federal
15 jurisdiction exists, even if no objection is made to removal. *See Rains v. Criterion Systems, Inc.*,
16 80 F.3d 339, 342 (9th Cir. 1996). The defendant always has the burden of establishing that
17 removal is proper. *Gaus*, 980 F.2d at 566. Normally this burden is satisfied if the plaintiff
18 claims a sum greater than the jurisdictional requirement. *Id.*

19 However, if the plaintiff does not claim a sum greater than the jurisdictional requirement,
20 the defendant cannot meet its burden by merely alleging that the amount in controversy is met:
21 “The authority which the statute vests in the court to enforce the limitations of its jurisdiction
22 precludes the idea that jurisdiction may be maintained by mere averment” *Id.* (quoting
23 *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)) (emphasis omitted).

24 In some cases, it may be “‘facially apparent’ from the complaint that the jurisdictional
25 amount is in controversy.” *See Singer v. State Farm Mut. Auto. Ins.*, 116 F.3d 373, 377 (9th Cir.
26 1997) (delineating the “appropriate procedure for determining the amount in controversy on
27 removal” as described in *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995)).

1 However, “[w]hen the amount is not facially apparent from the complaint, the court may
2 consider facts in the removal petition and may require parties to submit summary-judgment-type
3 evidence relevant to the amount in controversy at the time of removal.” *Kroske v. U.S. Bank*
4 *Corp.*, 432 F.3d 976, 980 (9th Cir. 2006) (internal quotation marks omitted).

5 Here, in arguing that the amount in controversy requirement has been satisfied,
6 Defendant relies solely on the allegations in the complaint. However, the court finds that it is not
7 facially apparent from the complaint that more than \$75,000 is in controversy. Accordingly,
8 jurisdiction has not been established.

9 The court will provide Defendant additional time to present “summary-judgment-type
10 evidence” showing by a preponderance of the evidence that this case meets § 1332(a)’s amount
11 in controversy requirement.

12 IT IS THEREFORE ORDERED that Defendant is granted twenty (20) days to establish
13 the minimum amount in controversy for federal jurisdiction. Plaintiff is granted ten (10) days to
14 file an opposition. No reply is required.

15 IT IS SO ORDERED.

16 DATED this 2nd day of April, 2018.

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18 LARRY R. HICKS
19 UNITED STATES DISTRICT JUDGE
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